price when a contract to sell is broken unless the goods can not readily be resold for a reasonable price. The principal case and *McCormick Har. Mfg. Co.* v. *Markert,* 107 Iowa 340, are really based on *Moline Scale Co.* v. *Breed,* 52 Iowa 307, which said that "where everything has been done by the vendor which he is required by his contract to do, and the property is tendered to the purchaser and he refuses to receive it, the vendor may recover the contract price." The earlier court, if we may judge from the context and *Gordon* v. *Norris,* 49 N. H. 376 cited in support, meant to make the very distinction which the later one disregards,—i. e.—the distinction between breach by the vendee before the sale is executed, and breach afterwards.

SURETYSHIP—DISCHARGE OF SURETIES—LIABILITIES ON BONDS.—An $8,000 bank deposit being garnished on a demand for $33,000 damages, sureties entered into a bond to dissolve the garnishment, giving bond for about double the amount demanded—i. e.—$65,000. By reason of an amendment to the original statement of claim, allowed after the bond was filed, which amendment substituted a greater demand for damages, judgment was obtained for $89,000. In an action to recover from the sureties, *held,* the liability of the sureties was not doubled by the amendment which was made without their knowledge or consent, nor were they discharged from liability by reason of the amendment, but are liable to pay the amount claimed by the plaintiff in the original cause of action. *Commonwealth to Use of Gettman* v. *Baxter,* (Penn. 1912), 84 Atl. 136.

The question presented by the principal case is one over which courts disagree, basing their decision upon different foundations. The line of cases in accord with the principal case seems to proceed upon the assumption that the possible liability of the sureties to the full amount of the bond was contemplated by the parties. *Everett* v. *Westmoreland,* 92 Ga. 670, 19 S. E. 37; *New Haven Bank* v. *Miles,* 5 Conn. 588; *Wright* v. *Brownell,* 3 Vt. 435. Upon the other side of the question, see *De Egana* v. *Jackson,* 5 La. Ann. 430; *Langley* v. *Adams,* 40 Me. 125, proceeding upon the ground that the amendment is a material alteration in the contract for bail into which the surety enters, and by which his liability is changed. The surety has a right to insist on the terms of his contract as originally made, *Hobson* v. *Sterling,* 114 N. Y. 558, 22 N. E. 37. Practically all cases agree that if the cause of action is changed, the bail is discharged, *Carrington* v. *Ford,* Fed. Cases No. 2, 499; *Pell* v. *Grigg,* 4 Cow. 426; *Bradhurst* v. *Pearson,* 32 N. C. 55; *Willis* v. *Crooker,* 1 Pick. 204. The principal case did not look with favor upon a technical rule "which had the effect of totally discharging the sureties from any responsibility whatever."

WATER COURSES—POLLUTION—DEFENCE.—In an action for damages against a factory owner for polluting a stream, held that it was no defence that the discharges into the stream causing the pollution, were necessary in the operation of the factory. *Penn American Plate Glass Co.* v. *Schwinn* (Ind. 1912) 98 N. E. 715.

The court in this case discussed the difference between the diversion or

detention of the waters of a stream by an upper riparian proprietor to a reasonable use, and the introduction into the stream of foreign substances, rendering its waters unfit for use by lower riparian proprietors; and *held,* that what is a reasonable use is a question of fact. *Munice Pulp Co.* v. *Koontz,* 33 Ind. App. 532, 70 N. E. 999; *Ulbricht* v. *Eufaula Co.,* 86 Ala. 587, 6 South. 78, 4 L. R. A. 572, 11 Am. State Rep. 72; *Hoxie* v. *Hoxie,* 38 Mich. 77. The court also criticized the rule announced in *City of Richmond* v. *Test,* 18 Ind. App. 482, 48 N. E. 610, and followed in *City of Valparaiso* v. *Hagan,* 153 Ind. 337, 54 N. E. 1062, 48 L. R. A. 707, 74 Am. State Rep. 305, which takes the view that there is an exception in favor of cities to use streams for sewage without liability. In *Barnard* v. *Sherley,* 135 Ind. 547, 34 N. E. 600, 24 L. R. A. 568, 41 Am. State Rep. 454, it was held that an upper riparian proprietor may turn water into a stream which has been taken from an artesian well, and used in bathing persons suffering from the most infectious diseases. This case followed *Pennsylvania Coal Co.* v. *Sanderson,* 113 Pa. St. 126, 6 Atl. 453, 57 Am. Rep. 445, which held that the drainage of a coal mine, necessary for its operation, could be drained into a stream to the injury of a lower riparian proprietor. In *City of Richmond* v. *Test, supra,* and *City of Valparaiso* v. *Hagan, supra,* the Pennsylvania rule was also applied. By the decision then in the principal case the Indiana cases upholding the Pennsylvania rule are overruled, and the Pennsylvania rule disapproved. The Pennsylvania court in *Pennsylvania Coal Co.* v. *Sanderson, supra,* distinguished the decisions following the general rule, upon the question of casting material into the water which polluted it, on the ground that the water coming from the mine in the case before the court, was in its natural state, and the stream was used merely for natural drainage purposes. In discussing the Pennsylvania rule, FARNHAM, WATER AND WATER COURSES, Vol. II, p. 1700, says, "No comment on that decision was necessary; the very course which the court took is sufficient to overthrow it." It was held in *Ohio Oil Co.* v. *Westfall,* 43 Ind. App. 661, 88 N. E. 354, that the pollution of a stream with salt water and oil escaping from an oil well, is justifiable, where it is necessary to the enjoyment of defendant's property. The doctrine of the principal case, that necessity is no defence to unreasonable pollution of a watercourse, is supported by *Straight* v. *Hover,* 79 Ohio St. 263, 87 N. E. 174, 22 L. R. A. (N. S.) 276; *Hunter* v. *Taylor Coal Co.,* 16 Ky. L. Rep. 190; *Beach* v. *Sterling Iron and Zinc Co.,* 54 N. J. Eq. 65, 33 Atl. 286; *H. B. Bowling Coal Co.* v *Ruffner,* 117 Tenn. 180, 9 L. R. A. (N. S.) 923, 100 S. W. 116, 10 Am. & Eng. Cases 581; *Day* v. *Louisville Coal and Coke Co.,* 60 W. Va. 27, 10 L. R. A. (N. S.) 167, 53 S. E. 776.

WEIGHTS AND MEASURES—SALES OF LESS THAN QUANTITY REPRESENTED—MALA PROHIBITA.—In accordance with a trade custom the defendant sold to retailers meat wrapped in oiled paper and marked on the boxes containing it a net weight that included the paper. It was convicted under a statute (Laws of 1911, c. 136) making it a misdemeanor to "sell less than the quantity represented." *Held,* that intent or knowledge of the seller is immaterial.